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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,607	03/17/2006	Alain Meunier	802220-0021US	7312

36713 7590 01/24/2008  
CABINET BEAU DE LOMENIE  
158 RUE DE L'UNIVERSITE  
PARIS, 75007  
FRANCE

EXAMINER
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YANG, ANDREW

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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01/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/542,607

Applicant(s)

MEUNIER ET AL.

Examiner

Andrew Yang

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This action is in response to Applicants' amendment filed on November 11, 2007.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor (U.S. Patent No. 6626944) in view of Burg (U.S. Publication No. 2002/0022883).

Taylor discloses an interspinous prosthesis 2 to be placed between spinous processes 3. Prosthesis 2 has an elastically deformable central portion 5 and two end portions from which a pair of lugs 6 extends to form a groove at each end portion for receiving a spinous process 3. Prosthesis 2 further includes a fastener means in the form of a strip 8 secured to conduits 7 of the prosthesis 2 and surrounding the processes (Figure 5) in order to hold the processes between the lugs 6. Taylor fails to disclose injecting cells which have been cultured (paragraph 37 into the intervertebral disc. Burg teaches correcting defects in spinal discs (Paragraph 47) by injecting suitable cells into the spinal disc in order to augment a tissue structure and to form new tissues therein (Paragraph 46). It would have been obvious to one skilled in the art at the time the invention was made to use the device of Taylor as well as injecting cells

into the intervertebral disc in view of Burg in order to augment tissue structure and to form new tissue in a defective spinal disc.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor (U.S. Patent No. 6626944) in view of Burg (U.S. Publication No. 2002/0022883) and further in view of Zahner et al. (U.S. Publication No. 2002/0136709).

Taylor and Burg discloses the claimed invention except getting the stem cells from the bone marrow or embryonic cells. Zahner et al. teaches that stem cells can be derived from embryonic origin and also from bone marrow. It would have been obvious to one skilled in the art at the time the invention was made to use the device of Taylor as modified by Burg with stems cells originating from bone marrow or embryonic cells in further in view of Zahner et al. Using the known technique of harvesting stem cells from embryonic or bone marrow origins as taught by Zahner et al. would have been obvious to one skilled in the art.

### ***Response to Arguments***

In response to Applicants' argument that there is no motivation to combine the references of Taylor and Burg, the Examiner respectfully disagrees. In column 2, lines 30-31, it is stated that the device of Taylor is used after a surgical treatment of a herniated disc for relief. It is understood in the prior art that both the disc and spinous process portion of the vertebrae can be treated in conjunction and thus it is within the grasp of one with ordinary skill in the art to use the techniques of Taylor and Burg

together to treat a spinal disc and the spinous process with a reasonable chance of success.

In regard to the teaching of Burg, the reference directed towards tissue engineering materials and methods for the reconstruction of tissues (Paragraph 11) not just simply correcting defects.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Publication No. 2004/0243239, 2002/0197240, 2001/0033834.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Yang whose telephone number is 571-272-3472. The examiner can normally be reached on 8:00am-5:30pm: Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AY  
1/22/2008

  
EDUARDO ROBERT  
SUPERVISOR EXAMINER